IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH, KOCHI

CP(IB)/26/KOB/2022

(*Under Section 10 of Insolvency and Bankruptcy Code, 2016 read with Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority Rules, 2016)*)

Order delivered on:- 17th May 2022

Coram:

Hon'ble Mr. Ashok Kumar Borah, Member (Judicial)
Hon'ble Mr. Anil Kumar. B, Member (Technical)

Corporate Applicant: -

M/s. Rubber Wood India Private Limited,
Indiawood Factory, Rubber Board,
RRDTC Complex, Manganum,
Kottayam, Kerala – 686 018
Represented by Managing Director Tomson Francis.

Appearance (through video conferencing)

For Corporate Applicant ... Shri. A. Kevin Thomas,
Smt. Nidhi Sam John, Advocates.

Per: Ashok Kumar Borah, Member (J)

This application has been filed by M/s. Rubber Wood India Private Limited (Corporate Applicant) for initiating the Corporate Insolvency Resolution Process under Section 10 of Insolvency & Bankruptcy Code 2016. The Corporate Debtor falls within the definition of the term 'Corporate Applicant' as defined in Sub-Section (5) of Section 5 of the Code.

2. The Corporate Applicant was incorporated on 13.02.1998 having its registered office at Manganum, Kottayam in the State of Kerala and therefore, the mater falls within the territorial jurisdiction of this Tribunal. The Corporate Applicant was

incorporated with the joint equity participation of Rubber Board (88%), Kerala State Industrial Development Corporation Ltd (10%), and two private entrepreneurs (2%).

3. The main objective of incorporating the company was for processing and value addition of raw rubberwood to make products like edge bonded planks, doors, furniture components, etc and thereby providing better prices for rubberwood and cheaper timber sources for furniture, construction, and allied industries. The Corporate Applicant commenced its commercial operation in November 2001 under the brand name "*INDIAWOOD*". The factory was on leasehold land from Rubber Board in Manganam, Kottayam District The total number of employees at the time of commencement was about 450, and at the time of cessation of operations, it was 300.

4. It is stated that the Corporate Applicant even though commenced its operations with ambitious objectives, it could not achieve the expected results for various reasons of internal and external factors and challenges as follows: -

    i. The project took more than envisaged time to implement which resulted in considerable Cost overrun. This pushed up the break-even levels of production and sales which should have been achieved to become financially viable.
    ii. The company came out with the product in the very initial years where the acceptability of using treated Rubberwood for furniture and construction required much education to the consumers which required very high promotional costs and market visibility. The product was very new and hitherto unknown as acceptable to its intended uses.
    iii. Soon after the launch of the products by the company, significant technological upgrades came in the process of manufacture and a lot of competitive units came out with similar brands which posed big challenges in market competition. The following loans were availed from the financial creditor, Central Bank of India, Kottayam.
        a) Term Loan against fixed assets - 6,53,14,000/-
        b) Cash Credit against goods - 2,30,00,000/-
        c) Funded Interest Term Loan Account- I- Rs. 1,00,00,000/-
        d) Funded Interest Term Loan Account-II- Rs. 1,35,00,000/-

    The operations could not sustain servicing of these loans with the Central Bank of India and the accounts became NPA in the year 2007.

iv. The capacity utilization of the plant became a big issue with its thin market demand and the products could not come to a good level of working to assist it to take off. Year after year the accumulated losses put pressure on production volumes whereas lack of success in the market resulted in the company working much below break-even levels. The capacity utilization percentages in the years 2009-10, 2010-11, 2011-12, 2012-13 and 2013-14 were 40.64%, 31.95%, 29%, 30.65% and 19% respectively.

5. Rubber Board as a shareholder has infused more than Rs 4.5 Crores as grants and about Rs 7.5 Crores as loan to alleviate the severe financial crisis of the Corporate Applicant. However, continuous infusion of funds from the Rubber Board was not possible due to budget constraints, and hence a revival proposal of the Company was submitted to the Government of India in 2014 seeking fund support. The same was not considered by the Government of India as per direction from the Ministry of Commerce and Industry. The company approached the Govt of Kerala also in this regard but with no positive response. Thereafter, the Corporate Applicant took another step to continue the operations, the unit was given on wet-lease i.e., including employees to a private entrepreneur group M/s Indiawood Industries in November 2015, however, they left the lease after three months, stating the reason of non-co-operation from employees and non-viability of the unit with the existing strength of workforce of about 300 in number including contract labourers. Since February 2016 the unit is not operational. It is stated that another revival proposal was again submitted to the Government of India and the Government of Kerala in August 2016 seeking fund support for reviving the unit, which also could not materialize. Thereafter, the company filed an application No: 127/2015 dated 07.07.2015 before the BIFR for reliefs but during the course of the hearing the BIFR was dissolved.

6. It is stated that the Central Bank of India proceeded under the provisions of the SARFAESI Act and consequently issued a Possession Notice on 15.09.2016 and

then took physical possession of the factory on 26.04.2019. Thereafter some portion of the plant and machinery has been sold by the bank thereby rendering the plant not capable of manufacturing any products. The amount in default as of 09.09.2016 including interest was Rs. 19,48,77,207/- as per the possession notice of the bank dated 15.09.2016.

7. It is stated that from the Audit Report of the year 2019-20 it is seen that the accumulated loss is of Rs.41,33,08,593/- as against share capital of Rs 3,53,23,000/-. The net worth is therefore about Rs (-) 36 Crore. (Negative). It is further stated that with no production, accumulating interest, and fixed costs remaining to be met, the accumulated losses as of 31.03.2021 are of Rs. 42,34,09,289/- as per the audit report resulting in an even worse net worth figure of above Rs. (–)37 Crore (Negative).

8. It is stated that perusal of the Audit Report as of 31.03.2021 would reveal that apart from dues to financial creditors, there are statutory dues and other operational dues including payments to employees/workmen. No significant receivables are there for the Company as the transactions were generally on a ready payment/advance payment basis. It is further stated that there are a number of cases filed against the Company by creditors, employees, etc. for recovery of dues. Some of these cases have been decided against the Company, but the execution of the decree is pending. Ministry of Labour, Government of India has referred the matter of alleged closure of the factory violating provisions of Labour Laws for the consideration of Labour Court, Ernakulam but the Company obtained stay on proceedings of the Ministry from the Hon'ble High Court of Kerala on the ground that the Ministry of Labour had no jurisdiction in the matter. Hence, the present application has been filed by the Corporate

Applicant to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor under Section 10 of Insolvency and Bankruptcy Code, 2016 read with Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority Rules, 2016

9. On 18.04.2022 when the matter was taken up for hearing it was noticed that the Application has been filed proposing an Insolvency Professional but he has not produced Form 2 and the Applicant was directed to produce the same. Thereafter, the Corporate Applicant has now submitted Form 2 of the IRP along with AFA on 20.04.2022.

10. We have heard Shri. Kevin Thomas, the learned counsel for the Corporate Applicant and perused the records. On verification of the records and going through the history of the case, from its inception till the date of filing of this Petition, it is discerned that the Corporate Applicant is not in a position to go ahead as the loss is accumulating. We came to the conclusion that the application filed by the Corporate Applicant is complete and that this application is a fit case to be admitted. Accordingly, the Application **CP(IB)/26/KOB/2022 is Admitted**. While admitting the application the moratorium is declared for prohibiting all the following as provided in Section 14 of the code:

14. (1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely: —

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

[1][Explanation.*—For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;]*

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

[1]*[(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.]*

[2]*[(3) The provisions of sub-section (1) shall not apply to —*

[3]*[(a) such transactions, agreements or other arrangements as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;]*

(b) a surety in a contract of guarantee to a corporate debtor.]

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

11. The moratorium shall have effect from the date of this order till completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under Subsection (1) of Section 31 or passes an order for liquidation of the Corporate Debtor under Section 33 as the case may be.

12. We hereby appoint **Mr.Renehan Vamakesan**, having Registration No **IBBI/IPA-002/IP-N00630/2018-19/11897,** residing at **Villa 23, Skyline Rosemount Homes, Kunjan Bava Road, Vyttila P.O., Kochi, Kerala-682 019** and e-mail:- **renahanv@gmail.com,** as an Interim Resolution Professional with the following directions:

(i) The term of appointment of **Mr. Renehan Vamakesan** , shall be in accordance with the provisions of Section 16(5) of the Code.

(ii) In terms of Section 17 of 'the Code', from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the 'Corporate Debtor' shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the 'Code', including taking control and custody of the assets over which the 'Corporate Debtor' has ownership rights recorded in the balance sheet of 'Corporate Debtor' etc. as provided in Section 18 (1) (f) of the 'Code'. The Interim Resolution Professional is directed to prepare a complete list of inventories of assets of the 'Corporate Debtor';

(iii) The Interim Resolution Professional shall strictly act in accordance with the 'Code', all the rules framed thereunder by the Board or the Central Government, and in accordance with the 'Code of Conduct' governing his profession and as an Insolvency Professional with high standards of ethics and moral;

(iv) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the 'Code' read with Section 15 calling for the submission of claims against 'Corporate Debtor'; and

(v) It is hereby directed that the 'Corporate Debtor', its Directors, personnel, and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the 'Corporate Debtor' as a going concern and extend all cooperation in accessing books and records as well as assets of the 'Corporate Debtor';

(vi) The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying the constitution of the committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene the first meeting of the committee within seven days of filing the report of the constitution of the committee.

(vii) The Corporate Applicant shall deposit an amount of Rs. 2,00,000/- (Rupees Two Lakh Only) with the Interim Resolution Professional to perform the duties assigned to him within two days from the date of receipt of this order. It is made clear that this amount is paid not as a fee of the Interim Resolution Professional.

(viii) The Interim Resolution Professional is directed to send regular progress reports to this Tribunal every fortnight.

14. The learned counsel for the Petitioner/Corporate Applicant shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this order to the Interim Resolution Professional at his email address forthwith.

Dated this 17th day of May 2022.

Sd/-

(Anil Kumar. B)
Member (Technical)

ASHOK KUMAR BORAH

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Date: 2022.05.18 15:29:53 +05'30'

(Ashok Kumar Borah)
Member (Judicial)

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